IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMOCO OIL COMPANY,	:	CIVIL ACTION
	:	
Plaintiff	:	
	:	
v.	:	
	:	
JOHN THOMAS MCMAHON and THOMAS JOHN MCMAHON,	:	
	:	
Defendants	:	No. 98-1625

M E M O R A N D U M

Padova, J. March 1, 1999

This is the second suit that Plaintiff, Amoco Oil Company ("Amoco"), has brought against Defendants, John Thomas McMahon and Thomas John McMahon, alleging breach of a set of agreements between the parties. Plaintiff has filed a Motion for Partial Summary Judgment, and Defendants have filed a Cross-Motion for Summary Judgment. For reasons that follow, Plaintiff's Motion will be denied and Defendants' Motion will be granted.

I. BACKGROUND

In October of 1993, Amoco entered into several written agreements with Defendants concerning the sale of a gas station ("the Property") in Corcordville, Pennsylvania. In October, 1993, the parties signed a Real Estate Purchase and Sale Agreement ("Sale Agreement"), by which Amoco sold the Property to Defendants, a Dealer Supply Agreement ("Supply Agreement"), and

two addenda to the Supply Agreement: an Amortization Agreement and an Environmental Rider. Under the Supply Agreement, Defendants agreed to buy gasoline from Amoco for a period of ten years. The Amortization Agreement provided that Defendants were to repay Amoco for equipment received over time and on the basis of the quantity of gasoline they sold. Details of these agreements appear in this Court's prior opinion, Amoco Oil Co. v. McMahon, No. 96-1425, 1997 WL 50448 (E.D. Pa. Feb. 6, 1997) and will not be recounted here.

In September of 1995, Defendants stopped buying gasoline from Amoco and leased the Property to Mobil Oil Company. Amoco then filed the prior suit, claiming breach of the Supply Agreement and the Amortization Agreement, and subsequently moved for partial summary judgment. The Court granted Amoco's motion and also ruled in its favor on Defendants' counterclaims under the Sale Agreement, including Defendants' claim that Amoco was obligated to remediate environmental contamination of the Property.[1] The parties then settled the case on the day of trial, February 12, 1997, and put the agreement on the record.

The instant suit was triggered by a letter to Amoco from the Pennsylvania Department of Environmental Protection ("PADEP"). Before the prior case had settled, Amoco had taken steps to

[1]Defendants had filed a separate suit against Amoco, and the Court consolidated the two suits. Defendants' claims in its separate suit became counterclaims in the consolidated action.

remediate ground water contamination that was due to gasoline leakage from an underground storage tank system on the Property. On June 19, 1997, some four months after the prior case was settled, Amoco's counsel wrote the PADEP stating that, under the Sale Agreement between the parties, Defendants had agreed to assume all liabilities associated with the contamination of the Property and that this Court had rejected Defendants' claims that Amoco was responsible for environmental remediation of the Property. Amoco informed the PADEP that it would no longer perform voluntary remediation of the Property. (Pl.'s Mot. Ex. I.) After reviewing this Court's prior opinion, the PADEP wrote Amoco that, while the opinion and the subsequent settlement agreement might set the rights and obligations of the parties with respect to each other, it had no effect on the ability of the PADEP to require remediation from Amoco. (Id. Ex. J.) The PADEP further stated that, under the Storage Tank and Spill Prevention Act, 35 Pa. Stat. Ann. § 6021.103 (West 1993 & Supp. 1998), Amoco was an owner of regulated storage tanks and it remained liable for any contamination that had occurred while it was owner of the facility. (Id. Ex. J.) It went on to say that if, as a result of an agreement between Amoco and Defendants, Defendants assumed liability and actually performed the remedial work, then the PADEP would not require Amoco to continue its remedial efforts. In the meantime, however, it would continue to

treat Amoco as a responsible party and it requested that Amoco not stop its remedial work. (Id.)

Amoco then wrote Defendants, requesting that they accept responsibility for environmental remediation of the Property. When Defendants did not respond, Amoco brought this action. Amoco seeks reimbursement for its past remedial efforts, a declaration that, under the agreements between the parties, Defendants are solely obligated to monitor and remediate environmental contamination of the Property, a declaration that Defendants must indemnify and hold Amoco harmless against any and all claims arising out of environmental contamination, and attorney's fees. Amoco's Motion for Partial Summary Judgment asks for a declaration of liability as to all of these issues, leaving the exact amount of damages and attorney's fees to be determined later.

Defendants have filed a Cross-Motion for Summary Judgment, contending that Amoco's Motion is based on several erroneous assumptions and arguing that: (1) Amoco's claims did not survive the settlement of the prior action; (2) Defendants did not agree to indemnify Amoco for Amoco's own negligence in connection with the environmental contamination and remediation; and (3) Amoco cannot enforce a purported indemnification induced by misrepresentation. The first of these issues is dispositive and it is the only one the Court will consider here.

II. LEGAL STANDARD

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" only if there is sufficient evidence with which a reasonable jury could find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). Furthermore, bearing in mind that all uncertainties are to be resolved in favor of the nonmoving party, a factual dispute is "material" only if it might affect the outcome of the case. Id.

III. DISCUSSION

A. The Settlement Agreement

With respect to the issue of whether Amoco's claims are barred by the settlement in the prior case between the parties, both sides agree that no material facts are at issue, that the settlement agreement is unambiguous, and that its scope is a question of law to be determined by the Court. The Court agrees and therefore will interpret the settlement agreement as a matter of law. Northbrook Ins. Co. v. Kuljian Corp., 690 F.2d 368, 375

(3d Cir. 1982) (citing Pines Plaza Bowling, Inc. v. Rossview, Inc., 145 A.2d 672, 676 (Pa. 1958)).

The transcript of the settlement contains the following:

> THE COURT: This is Amoco Oil v. John McMahon, Civil Action Number 96-1425. This case has been called for trial this morning. Both parties were ready for trial, and as a result of additional conferences between the parties I understand that the parties now intend to report that they have reached settlement.
>
> MR. DeSTEFANO [Amoco's counsel]: That's correct, your honor. If I may take a crack at it, Mr. Kramer I'm sure will correct me if I say anything wrong.
>
> The parties have agreed to settle this case in essence for $150,000 in total damages to be paid out of the proceeds of a sale of the property in question to Mobil Oil Company. Mobil Oil Company has a first refusal purchase option on this property. It is anticipated that Mobil Oil Company will exercise such a purchase option, and therefore the parties have agreed to have the Court appoint an appraiser[,] to request that that appraiser appraise the property at its fair market value as soon as possible[,] for Amoco then to make an offer on the property at that number, for that number to be communicated to Mobil, at which time Mobil will have 60 days in which to exercise its right of first refusal. And if the right of first refusal is exercised, there will be an additional 60 days or less for Mobil to go to settlement, and that it is agreed that out of the first proceeds of that sale, the sale of this property to Mobil, Amoco will receive $150,000.
>
> THE COURT: That's out of the first moneys due the owner?
>
> MR. DeSTEFANO: Due the owner.
>
> THE COURT: Right.
>
> MR. DeSTEFANO: And I believe that both Mr. [John] McMahon and his brother, Mr. Thomas McMahon, have consented to that scenario.

The only other addition I have to that settlement agreement is that if for some reason which is not anticipated Mobil does not exercise its purchase option, then the parties will agree to go to Judicate or some other arbitration or form of alternative dispute resolution and litigate the amount of damages only[,] which is the issue that's left open after your Honor's motion on summary judgment[,] and be bound by whatever the arbitrator or adjudicator puts on that damage number, whereupon that number will be entered as a final judgment by this Court subject to Mr. McMahon's appellate rights.

Unless Mr. Kramer wants to add anything, that's the essence of our settlement agreement.

THE COURT: Mr. Kramer?

MR. KRAMER [Defendants' counsel]: Thank you, your Honor. Just to clarify a couple of things with regard to the scenario where Mobil does not exercise its option, the deal is is [sic] that we have the right and have preserved without exception our right to appeal the counterclaim dismissal, to appeal the entry of summary judgment on the counterclaim and to file our notice of appeal within 30 days of the entry of the arbitration award by this Court on damages, and then we could go upstairs to the 3rd Circuit.

And also I wanted to make clear that this agreement supersedes completely all prior agreements with Amoco. This agreement replaces everything. This is the only agreement that's in effect now. There are no prior agreements.

THE COURT: Well, is it part of the settlement agreement that the parties will execute mutual releases?

MR KRAMER: Yes.

THE COURT: For all claims that have been made arising out of their agreements?

MR. KRAMER: Yes.

THE COURT: Is that correct, Mr. DeStefano?

MR. DeSTEFANO: Yeah, I -- yeah. That wasn't discussed but I think that's a reasonable thing, and I would just add that mutual releases would be executed upon payment of the $150,000.

THE COURT: Correct.

MR. DeSTEFANO: Or upon payment of the $150,000 since that's the most likely scenario.

. . .

MR. KRAMER: . . . Just so it's clear, your Honor, with regard to the mutual releases, obviously that would modify under scenario two.

THE COURT: That will only apply if the option is exercised and the property is sold to Mobil --

MR. KRAMER: Exactly.

MR. DeSTEFANO: And the money is paid.

MR. KRAMER: Exactly . . .

. . .

MR. DeSTEFANO: In addition to the foregoing, your Honor, it's been agreed that if Mr. McMahon is not happy with the appraisal, he then will retain -- he will then have an option to pay Amoco the sum of $150,000 in case within 30 days of the date that the appraisal has been reported. And at that point we could, from the point of payment, the 30 days right to appeal the counterclaim would kick in and we could pursue the --

MR. KRAMER: No, the payment --

THE COURT: No, the case is fully resolved. Is that correct?

MR. KRAMER: Yes, your Honor.

MR. DeSTEFANO: In which case the case is fully resolved and we'll sign the release.

(Pl.'s Resp. Ex. 1, Tr. Settlement Conf. (“Tr.”) at 1-6.) The attorneys for both sides then reported that the case had been settled on the terms as stated on the record. Defendants paid the $150,000 to Amoco in April of 1997, as evidenced by canceled checks. (Defts.' Resp. Ex. 2.)

B. The Scope of the Promised Releases

In the transcript of the settlement agreement, both the Court and Amoco's counsel refer to releases that would be signed in the future, when Defendants paid Amoco the $150,000. Neither side has submitted written releases as evidence and both parties rely on the transcript of the settlement agreement in discussing the scope of the releases. The Court therefore concludes that there were no written releases; however, the parties did make promises to release each other upon payment of the $150,000. The Court will therefore refer to “promises to release” or “promised releases” rather than to “releases.” Amoco does not contest that there were valid promises; it contests only the scope of the promises to release. It also states that the terms put on the record in the settlement conference are dispositive of the issue of whether its claims in this suit are barred. (Pl.'s Resp. at 2.) The Court will therefore proceed on the basis that at the settlement conference mutual promises to release were established on a contingent basis, that payment of the $150,000 was a

condition precedent to the promises becoming enforceable, and that the promises became enforceable when Defendants paid the $150,000 to Amoco, in April of 1997.

Defendants' position is that the scope of the promised releases was set out in their attorney's statement, made at the settlement conference, that the settlement agreement "supersedes completely all prior agreements with Amoco. This agreement replaces everything. This is the only agreement that's in effect now. There are no prior agreements." (Tr. at 4.) Amoco disagrees, arguing that the scope of the promised releases was narrower.

Immediately after Defendants' attorney stated that the settlement superseded all prior agreements, the Court asked: "[I]s it part of the settlement agreement that the parties will execute mutual releases . . . [f]or all claims that have been made arising out of their agreements?" (Id.) Both parties agreed that it was. (Id.) Because both parties responded in the affirmative to the Court's question, the Court will use that as the basis for determining the scope of the promised releases, rather than the statement of Defendants' counsel that the settlement agreement "replaces everything" and is "the only agreement that's in effect now." (Tr. at 4.)

Amoco's position is that

> to determine the scope of the settlement agreement the Court need only identify the claims that had been made

> by Amoco in the prior lawsuit. Amoco's claims in that case were for breach of an Amortization Agreement (which obliged John McMahon to repay funds loaned him by Amoco) and breach of a Supply Agreement (which obligated John McMahon to purchase specified quantities of gasoline from Amoco). . . . Since Amoco did not assert any claims for indemnity under the Sale Agreement in the prior case, it could not have intended to settle or release either defendant from that type of claim.

(Pl.'s Resp. at 4.) Amoco claims it promised no release to Defendants absolving them from their responsibilities under the Sale Agreement or under the Environmental Rider to the Supply Agreement.

Amoco does not discuss how the promises to release relate to Defendants' counterclaims in the prior suit. The promises were to release each other "for all claims that have been made arising out of [the parties'] agreements," not just for the claims that Amoco made. In the prior suit, Defendants had counterclaims for violations of the Sale Agreement for (1) failing to disclose fully the environmental contamination of the premises due to gasoline leaks and (2) failing to remediate the environmental contamination. Defendants thus made exactly the sort of claims that Amoco is making in this case: claims regarding liability for environmental contamination under the Sale Agreement.[2]

[2]Amoco also makes a claim regarding liability for environmental contamination under the Environmental Rider to the Supply Agreement, but the Rider incorporated by reference in the Sale Agreement and must be read in conjunction with it.

Amoco contends that its counsel “made it abundantly clear that the settlement of the prior case did not include any [promise of] release from environmental responsibility” when he responded to a letter dated April 1, 1997, from Defendants' former counsel. The letter from defense counsel, which appears to have been faxed to Amoco's counsel, reads in pertinent part:

> TO: BILL DESTEFANO 4/1/97
> 1. NEEDED LANGUAGE
> Amoco agrees that it is responsible for any environmental problems that existed as of October 1, 1995, on the subject property.
> Amoco has agreed to provide a general release to the McMahons on the subject property upon receipt of the initial payment pursuant to the settlement between the parties which shall remain valid provided the remaining payments are timely made.

(Pl.'s Mot. Ex. E.) The schedule of payment defense counsel proposed was $50,000 immediately and the other $100,000 after a year. Amoco's counsel responded, “Amoco cannot give [the] type of assurance you request regarding the environmental contamination in view of Judge Padova's Opinion and Order of February 6, 1997.” (Pl.'s Mot. Ex. F.) In addition, he vetoed the proposed payment schedule.

Despite Amoco's refusal to accept the language Defendants requested, they went ahead with the payment required under the settlement agreement. Amoco argues:

> If defendants truly believed that the settlement of the prior case included environmental claims that arose out of the condition of the Property, they presumably would not have paid Amoco the settlement funds after its counsel advised their counsel that Amoco would not

> accept responsibility. Further, at no time did defendants or their counsel complain to this Court that Amoco's failure to release them from environmental responsibility constituted a breach of the settlement agreement.

(Pl.'s Resp. at 4-5.)

Defendants' request for the “needed language” does not mean they believed the resolution of the case did not include environmental claims, as Amoco contends. It means Defendants understood that the neither the opinion, in which the Court ruled against them on their environmental counterclaims, nor the settlement agreement, in which the parties promised to release each other, gave them the protection they sought. Neither obligated Amoco to remediate environmental contamination of the Property. In its letter requesting the “needed language,” defense counsel thus sought to secure that protection for Defendants. Although Defendants could not obtain that concession from Amoco, they went ahead with the plan set out in the settlement agreement. They had no leverage to achieve a better result.

Amoco evidently believed that all environmental claims between the parties had been settled by the opinion and the settlement agreement. It referred the PADEP to both in stating that it no longer had any liability for remediation of the Property and that Defendants were solely responsible.

In the prior opinion, the Court determined that Amoco did not have an obligation to Defendants under the Sale Agreement to

remediate the Property. What the Court did not determine, because it was not asked, was whether Defendants had an obligation to Amoco for remediation made necessary by environmental contamination when authorities imposed liability on Amoco. It is too late to revisit that issue now. The parties agreed on releases "for all claims that have been made arising out of their agreements." (Tr. at 4.) One of the claims that had been made concerned liability as between the parties for remediation of environmental contamination of the Property. The Court concludes that the promises of release apply to that claim and that, therefore, Amoco is precluded from making the claims it asserts in this law suit concerning liability for remediation of environmental contamination of the Property.[3]

C. Compulsory Counterclaims

Even if Amoco's promise to release did not apply to its current claims, the claims would be barred as a matter of law because they were compulsory counterclaims which were not asserted in the previous litigation. Federal Rule of Civil Procedure 13(a) states:

---

[3]Amoco is a sophisticated contracting party. If it had wanted to include a specific exception or reservation in its promise to release "all claims that have been made" arising out of the agreements between the parties, it could have done so. The Court will not reform the settlement agreement to include such a term.

> **(a) Compulsory Counterclaims.** A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.

Fed. R. Civ. P. 13(a).

A compulsory counterclaim is a claim that "arises out of the transaction or occurrence" that is the subject of the opposing party's claim. The United States Court of Appeals for the Third Circuit has explained that "a counterclaim is compulsory if it bears a logical relationship to an opposing party's claim. . . . [A] counterclaim is logically related to the opposing party's claim where separate trials on each of their respective claims would involve a substantial duplication of effort and time by the parties and the courts." Great Lakes Rubber Corp. v. Herbert Cooper Co., Inc., 286 F.2d 631, 634 (3d cir. 1961) (punctuation and citations omitted); see also Lance International Ltd. v. Menominee Paper Co., No. 98-2229, 1998 WL 464901 (E.D. Pa. Aug. 5, 1998).

Amoco's claim for a declaration of liability for environmental remediation under the Sales Agreement is certainly logically related to Defendants' prior counterclaim for a declaration of liability for environmental remediation under the Sales Agreement. It is nearly identical: the same claim seen from the perspective of the other side in the litigation. In

addition, "[w]hen the same contract serves as the basis for both the claims and the counterclaims, the logical relationship standard . . . has been satisfied." 6 Charles Allen Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice and Procedure § 1410, at 68 (1990). In this case, both contracts under which Amoco asserts its claims, the Sale Agreement and the Supply Agreement (with its Environmental Rider), were at issue in the prior litigation.

"[T]he policy behind compelling [a party] to raise his compulsory counterclaim or have it barred from subsequent litigation is to enable the court to settle all related claims in one action, thereby avoiding a wasteful multiplicity of litigation on claims arising from a single transaction or occurrence." Bristol Farmers Market v. Arlen Realty & Devel. Corp., 589 F.2d 1214, 1221 (3d Cir. 1978) (internal quotations and citation omitted). It is well settled that "[a] counterclaim which is compulsory but is not brought is thereafter barred." Baker v. Sold Seal Liquors, Inc., 417 U.S. 467, 469 n.1, 94 S. Ct 2504, 2506 n.1 (1974); see also Great Lakes, 286 F.2d at 634 ("[T]he doctrine of res judicata compels the counterclaimant to assert his claim in the same suit for it would be barred if asserted separately, subsequently.")

Amoco engaged in voluntary remediation of the Property at least from the time of its sale to Defendants. (Defts.' Resp.

Ex. I.) Yet, it did not seek indemnification for the remediation or a declaration that Defendants were liable for remediation of the Property in the prior suit. Those claims should have been asserted in Amoco's response to Defendants' counterclaims, which sought a determination of liability for environmental remediation under the Sales Agreement. All claims based on environmental contamination could and should have been resolved in one law suit. Those claims are now barred, and cannot be asserted here. Baker, 417 U.S. at 467 n.1, 94 S. Ct. at 2506 n.1.

IV. CONCLUSION

Amoco's claims in this law suit are barred by the settlement agreement in the prior case. Moreover, Amoco's current claims are barred as a matter of law because Amoco failed to assert them as compulsory counterclaims in that case. Defendants' Motion for Summary Judgment will be therefore granted and Plaintiff's Motion will be denied.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMOCO OIL COMPANY,	:	CIVIL ACTION
Plaintiff	:	
v.	:	
JOHN THOMAS MCMAHON and THOMAS JOHN MCMAHON,	:	
Defendants	:	No. 98-1625

O R D E R

AND NOW, this day of March, 1999, upon consideration of Plaintiff's Motion for Partial Summary Judgment (Doc. No. 22), Defendants' Response and Cross Motion for Summary Judgment (Doc. Nos. 24 & 25) and all the responses and submissions thereto, it is **HEREBY ORDERED** that Plaintiff's Motion is **DENIED** and Defendants' Cross Motion is **GRANTED.** Judgment is entered in favor of Defendants and against Plaintiff.

BY THE COURT:

JOHN R. PADOVA, J.